

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAR 28 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0034-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
CHANITO S. BACA,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF NAVAJO COUNTY

Cause No. CR20020630

Honorable John Lamb, Judge

REVIEW GRANTED; RELIEF DENIED

Brad Carlyon, Navajo County Attorney
By Galen H. Wilkes

Holbrook
Attorneys for Respondent

Chanito S. Baca

San Luis
In Propria Persona

H O W A R D, Chief Judge.

¶1 Following a jury trial, petitioner Chanito Baca was convicted of first-degree murder and received a life sentence. We affirmed his conviction and sentence on appeal. *State v. Baca*, No. 1 CA-CR 04-0425 (memorandum decision filed Aug. 23, 2005). In October 2005, Baca filed his first notice of post-conviction relief pursuant to Rule 32,

Ariz. R. Crim. P. We denied review of Baca's petition for review of the trial court's dismissal of that petition. *State v. Baca*, No. 1 CA-CR 06-1069 (order filed Nov. 30, 2007). In February 2011, Baca filed a successive post-conviction petition, which the court summarily dismissed along with his motion for reconsideration. This petition for review followed. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 Baca asserts his conviction should be reversed based on a significant change in the law pursuant to Rule 32.1(g). He argues the amendments to A.R.S. § 13-205 pertaining to the burden of proof when a defendant claims his use of force was justified should apply retroactively to him. In 2006, Arizona's legislature passed Senate Bill (S.B.) 1145, amending § 13-205 by placing the burden on the state to prove beyond a reasonable doubt that the defendant did not act with justification if the defendant presented some evidence of justification. 2006 Ariz. Sess. Laws, ch. 199, § 2. The subsequent amendment to § 13-205, S.B. 1449, effective September 30, 2009, provided that S.B. 1145 applied retroactively to "all cases . . . that, as of April 24, 2006, had not been submitted to the fact finder to render a verdict." 2009 Ariz. Sess. Laws, ch. 190, § 1. S.B. 1449 further provided that the purpose of the act is "to clarify that the legislature intended to make" S.B. 1145 "retroactively applicable to all cases in which the defendant did not plead guilty or no contest and that were pending at the time the bill was signed into law . . . on April 24, 2006, regardless of when the conduct underlying the charges occurred." *Id.* § 2.

¶3 Baca was convicted in 2004. The mandate from the appeal of his conviction and sentence issued on October 11, 2005, at which time his conviction became final. *See State v. Febles*, 210 Ariz. 589, ¶ 9, 115 P.3d 629, 632-33 (App. 2005) (“A conviction is final when ‘a judgment of conviction has rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.’”), *quoting State v. Towery*, 204 Ariz. 386, ¶ 8, 64 P.3d 828, 831-32 (2003). In its ruling dismissing Baca’s petition below, the trial court first provided an accurate procedural summary of the case and then correctly concluded that “[b]ecause Defendant’s case was final on October 11, 2005 and was not pending on April 24, 2006, the 2006 amendment to A.R.S. [§] 13-205(A) is inapplicable to Defendant’s case. Therefore, Defendant failed to raise a colorable claim.” *Cf. State v. Montes*, 226 Ariz. 194, ¶¶ 17-19, 245 P.3d 879, 883 (2011) (legislature acted within proper authority by enacting S.B. 1449 providing S.B. 1145 applied retroactively).

¶4 Additionally, Baca presents for the first time on review wholly new arguments to support his position that the trial court should have applied the amended version of § 13-205 to him. Specifically, he argues the court’s ruling violates the ex post facto, bill of attainder, due process, and equal protection provisions of the United States Constitution and that he is entitled to retroactive application of the amended statute under the analysis set forth in *Teague v. Lane*, 489 U.S. 288 (1989). Because our review is limited to “issues which were decided by the trial court,” Rule 32.9(c)(1)(ii), Ariz. R. Crim. P., we limit our review to the arguments presented to the court below. *See also*

State v. Ramirez, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (declining to address issue not presented first to trial court).

¶5 Although the petition for review is granted, relief is denied.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Michael Miller
MICHAEL MILLER, Judge